Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1977

No. 76-1079

JOZEFA LEVC (nee O'BLAK) and
IVANA OGRIN (nee O'BLAK)
Plaintiffs and respondents,
[By the Consul General of Yugoslavia
at San Francisco, California, their
Attorney-in-Fact]

Petitioners

vs.

THE HONORABLE HOLLIS G. CONNORS,
Treasurer of the State of Montana,
and KEITH COLBO, Director, Department
of Revenue of the State of Montana
Defendants and Appellants

Respondents

On Petition for a Writ of Certiorari
to the Supreme Court of Montana

PETITIONERS' REPLY BRIEF

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CITATIONS

Cases:

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Treaties:

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Statutes:

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PETITIONERS' REPLY BRIEF

I.

PETITIONERS' STATEMENT OF THE FACTS IS NOT "INACCURATE AND ARGUMENTATIVE."

Almost at the outset of respondents' brief [p. 2], it is stated that "Petitioner's statement of the facts of this case is inaccurate and argumentative", without however pointing to a single instance of either inaccuracy or argumentativeness. There immediately follows what is described as "a correct statements of facts". However, there is no occasion for dispute over the basic, essential facts that the modest estate ($8,693.91) of a deceased resident of Montana was escheated for lack of known heirs, Jozefa Levc and Ivana Ogrin, decedent's nieces and concededly his next of kin and heirs at law, at all times herein material residents and nationals of Yugoslavia, through the Consul General of Yugoslavia in San Francisco [Petitioners herein]

filed an action as required by law to claim their inheritance, the State of Montana resisted on the ground that the action had not been timely filed [that is seven months too late]. The trial court, on basis of Estate of Spehar, 140 Mont. 76 [367 P2d 563 (1961)], decided by the Montana Supreme Court on authority of Kolovrat v. Oregon, 366 U.S. 187 (1961); held that "The claimants here have the same right of 'disability' (Section 91-509) as do American citizens and who are not living in the United States" [Pet. App. B, p.18a], that therefore the action had been timely filed, and awarded the escheated estate to them. On appeal by the competent officers of the State of Montana, the Montana Supreme Court disagreed, and reversed, holding that:

> "However, they are not included in the class of United States citizens outside the United States. We do not feel compelled to go beyond the holding in Kolovrat and judicially

designate them as within that class and entitled to the exception." [Pet. App. A, p.6a, 555 P2d at 752].

II

CLEARLY AND INDISPUTABLY THIS CASE SQUARELY PRESENTS A SINGLE, SPECIFIC, DIRECT FEDERAL QUESTION, THAT IS WHETHER A STATE COURT OF LAST RESORT HAS DENIED TO CERTAIN FOREIGN NATIONALS [the petitioners herein] A SUBSTANTIAL RIGHT ACCORDED TO AND VESTED IN THEM BY A SUBSISTING TREATY BETWEEN THE UNITED STATES AND THEIR COUNTRY.

Respondents contend that no federal question is presented here, that "The Supreme Court of Montana decision from which Petitioners certiorari to this Court does not decide any federal question. It does not decide any Federal Statute, Constitutional Question or Treaty. It merely decides a Montana law question as to a State statute of limitations". [Resp. br. p. 8]. There are pages [7, 8, 9, 10, 11] of citations of cases, completely irrelevant here and which require no consideration or

comment here, on the law of construction and application of statutes of limitation. The speciousness of the whole of this argument is at once demonstrated by the Montana Supreme Court's own statement of what it concluded to be the issue in this case: [Pet. App. A, p.3a 555 P.2d 751]

> "The issue before this Court is whether the exception to the two-year statute of limitations for citizens of the United States beyond the limits of the United States, applies to citizens of Yugoslavia residing in Yugoslavia."

Then, after quoting the provisions of the statute (§91-509, R.C.M. 1947) providing for the exception from the two-year limitation to claim an escheated estate "of infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States" until "two (2) years after their respective disabilities cease", the Court recognizes that:

> "It is settled by Kolovrat v.

> Oregon, 366 U.S. 187, 6 L.Ed.2d 218, and Estate of Spehar, 140 Mont. 76, 367 P.2d 563, that under the reciprocity provisions of an 1881 treaty and its 'most favored nations' clause, Yugoslavian claimants have the same right to inherit their relatives' personal property as they would if they were American citizens living in Montana. The relevant portions of the treaties directing that result are set out in the footnotes to the report of Kolovrat".
>
> [Pet. App. A, pp. 4a, 5a, 555 P2d 751]

Almost immediately thereafter, however, the Court—to us inexplicably—falls into the fatal error of creating—and excluding the Yugoslav heirs from—"the class of United States citizens outside the United States", [please see quote p. 3 supra], stating as its rationale that:

> "This exception was enacted in 1943. At that time large numbers of our citizens were called to duty outside the United States. Presumably this exception was enacted for their benefit until they could return to their homeland".
>
> [Pet. App. A, p.6a, 555 P2d 752]

But where in the 1881 treaty, where in this

Court's exhaustive analysis and interpretation of the treaty in Kolovrat, is there any right or authority to create a "class", or "classes" of persons, whether American or Yugoslav nationals, to whom the treaty does not apply? Place upon these claimants, the petitioners herein, the cloak of American citizenship, by which their rights are to be measured, and the inescapable result is that they fit squarely within the exception from the two-year statute of "citizens of the United States beyond the limits of the United States". Since they never were in the United States, it is obvious that their disability never ceased, so it is utterly futile and irrelevant to argue or try to determine when the statute began to run against them. Clearly, because of their having at all times been "beyond the limits of the United States", the statute could never have possibly

begun to run against them. There is no question or argument of course that they, as everyone else, would have, as the trial court pointed out [Pet. App. B, p.19a] been barred by the over-all ten year limitation of Section 91-502, R.C.M. 1947 as amended.

CONCLUSION

Having, as they trust, clearly demonstrated the error of the Montana Supreme Court in creating—and then placing them into—a "class" of persons held not entitled to the benefit of the provisions of a statute which does indeed apply to all American citizens and so under the 1881 treaty to all Yugoslavs, petitioners submit that the writ should be granted. In fact petitioners reiterate the suggestion first made in their Petition for Writ (p. 23), that this case merits and ought to be accorded the same treatment as was given the Belemecich case, 375 U.S. 395

(1964) where the State of Pennsylvania attempted to deny to the Yugoslav heirs the whole of their rights of inheritance accorded and due them under the 1881 treaty. In Belemecich this Court in a two-line per curiam opinion granted the petition for writ and reversed. Such action here would put a prompt, merciful, just and correct end to this litigation.

Respectfully submitted,

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